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EX PARTE – FILED ELECTRONICALLY

March 9, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers, WC 03-173

Petitions for Forbearance of Verizon, SBC, Qwest and BellSouth, WC Docket Nos. 03-157, WC Docket No. 03-189

Dear Ms. Dortch,

On March 8, 2004, George S. Ford, Chief Economist for Z-Tel Communications, Inc. ("Z-Tel") and I met with Tamara Preiss, Monica Desai, Steve Morris, Julie Saulnier, Richard Kwiatkowski, and Jeremy Marcus of the Pricing Policy Division of the Wireline Competition Bureau to discuss the attached materials in the above-referenced documents.

In particular, we discussed how the Commission's proposed changes to TELRIC are flatly inconsistent with economic principles and are not supported by the evidence. In fact, the Commission's stated purpose for opening the TELRIC Notice was to reduce complexity in the rules so as to minimize variation in UNE rates established among the several states. We discussed how Z-Tel's comments showed that, in fact, UNE rates set by state commissions generally track actual cost differences between the states. In addition, we discussed how over time state UNE rates have trended towards TELRIC. In other words, in the last eight years of TELRIC implementation state commissions have "learned by doing", as one would expect. Therefore, arguments lodged by the incumbents that the TELRIC rules should be changed because state commissions have changed their rates recently or over time should be soundly rejected.

Z-Tel's position is supported by the attached Phoenix Center Policy Bulletin No. 8, "Federalism in Telecommunications Regulation: Effectiveness and Accuracy of State Commission Implementation of TELRIC in Local Telecoms Markets." We note that this study draws from and extends a submission in WC Docket No. 03-173 written by J.A. Eisenach and J.R. Mrozek to support its conclusions. As Justice Thomas said in *AT&T v. Iowa Utils. Board*, "basic principles of federalism compel us to presume that States are competent" to interpret and apply the federal 1996 Telecommunications Act.¹

Z-Tel also discussed the above-referenced Bell company forbearance petitions. Granting these petitions could have the effect of prohibiting UNE-P carriers from charging terminating access while existing FCC CLEC access charge rules mandate that local carriers carry such traffic. Z-Tel believes that such a prohibition would not only result in clear discrimination but would amount to a regulatory taking. Moreover, Z-Tel shows that this taking would amount to virtually or substantially eliminating the \$9.17 gross margin obtainable on a UNE-P line showed by AT&T in its February 25, 2004 submission in these dockets.² Prohibiting UNE-P carriers from collecting per-minute access charges would also implicate the FCC's section 251(d)(2) "impairment" standard in this context, as the FCC (unanimously) stated in paragraph 77 of the *Triennial Review Order* that "[a] firm's ability to enter is affected by the costs, incurred, revenues obtained, and risk involved in entering a market", and that all "factors" that "limit its potential revenues" would "reduce the likelihood of entry." Given the millions of UNE-P lines now in service, granting the Bells this radical, unprecedented and far-reaching multi-million dollar windfall would also clearly require a reexamination of all Bell company section 271 authorizations that claimed that UNE-P entry constituted "facilities-based" entry for purposes of meeting the "Track A" requirements of 47 U.S.C. 271(c).

Z-Tel expects to expatiate upon these issues with others in the Commission.

Sincerely,

s/Thomas M. Koutsky
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cc: Tamara Preiss
Steve Morris
Monica Desai
Julie Saulnier
Richard Kwiatkowski
Jeremy Marcus

¹ *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366, 411 (1999) (Thomas, J., dissenting).

² Letter from Joan Marie Marsh, AT&T to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 03-189, 03-157 (Feb. 25, 2004).